

JAN 22 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ROBERT ELLEE TUCKER,

Defendant - Appellant.

No. 08-30181

D.C. No. 2:03-cr-00117-FVS-1

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of Washington
Fred L. Van Sickle, District Judge, Presiding

Submitted January 13, 2009^{**}

Before: O'SCANNLAIN, BYBEE, and CALLAHAN, Circuit Judges.

Robert Ellee Tucker appeals from the 24-month sentence imposed following the revocation of supervised release. We have jurisdiction under 28 U.S.C. § 1291,

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

and we affirm.

Tucker contends that the district court violated Rule 32.1 of the Federal Rules of Criminal Procedure and his right to due process by failing to disclose material information used in determining that a sentence at the statutory maximum was necessary for him to enroll in the Bureau of Prisons residential drug treatment program. No reversible error was committed. *See United States v. Warr*, 530 F.3d 1152, 1162 (9th Cir. 2008); *see also United States v. Duran*, 37 F.3d 557, 561 n.3 (9th Cir. 1994).

Tucker also contends that the district court violated 18 U.S.C. § 3553(c)(2) by failing to explain the specific reasons for his sentence above the recommend range under the Chapter 7 policy statements. This contention is belied by the record. *See United States v. Musa*, 220 F.3d 1096, 1101 (9th Cir. 2000); *cf. United States v. Miqbel*, 444 F.3d 1173, 1179 (9th Cir. 2006).

AFFIRMED.